



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0354; FRL-8958-01-R4]

Air Plan Approval; North Carolina; Mecklenburg Air Quality Permit Rules Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ) via a letter dated April 24, 2020, and was received by EPA on June 19, 2020. The revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP and adds several rules. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0354 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9009. Mr. Adams can also be reached via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The Mecklenburg County LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve updates and additions to the LIP for, among other things, general consistency with the North Carolina SIP.¹ Mecklenburg County prepared three submittals in order to modify the LIP and reflect regulatory and administrative changes that NCDAQ has made to the North Carolina SIP.² The three submittals were submitted to EPA as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notice at the local level, these submittals were withdrawn from EPA through a letter

¹ Hereinafter, the terms “North Carolina SIP” and “SIP” refer to the North Carolina regulatory portion of the North Carolina SIP (i.e., the portion that contains SIP-approved North Carolina regulations).

² The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals – one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates in a revision dated April 24, 2020.³

II. What Action is EPA Proposing to Take?

The April 24, 2020, revision includes updates to and additions of several MCAPCO rules. The January 21, 2016, changes from MCAQ include updates to MCAPCO Rule 1.5214 - *Commencement of Operation*; and the January 14, 2019, changes from MCAQ include updates to MCAPCO Rules 1.5212 - *Applications*; 1.5213 - *Action on Application; Issuance of Permit*; 1.5215 - *Application Processing Schedule*; 1.5219 - *Retention of Permit at Permitted Facility*; 1.5221 - *Permitting of Numerous Similar Facilities*; 1.5222 - *Permitting of Facilities at Multiple Temporary Sites*; and 1.5232 - *Issuance, Revocation, and Enforcement of Permits*.⁴ Additionally, the January 14, 2019, portion of the revision requests approval of MCAPCO Rules 1.5217 - *Confidential Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; and 1.5220 - *Applicability Determinations*.⁵ The remainder of this section discusses all of the aforementioned rules and any proposed changes.

A. Rule 1.5212, “Applications”

The April 24, 2020, revision modifies Rule 1.5212, *Applications*, under Article 1.0000, *Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants*, by correcting grammatical errors and updating references. MCAQ also added language concerning procedures for submitting determination letters to the Director and language concerning the submittal of confidential information. This rule outlines the procedures that permit applicants should follow to complete a permit application for MCAQ. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. The current changes to Rule 1.5212 remove redundant language and

³ EPA notes that the April 24, 2020, submittal was received by EPA on June 19, 2020.

⁴ The April 24, 2020 revision contains changes to other Mecklenburg LIP-approved rules that are not addressed in this notice. EPA will be acting on those rules in separate actions.

⁵ MCAPCO Rules 1.5217 - *Confidential Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; and 1.5220 - *Applicability Determinations* were erroneously included in the table at 40 CFR 52.1770(c).

reference Rule 1.5102, *Definitions*, in order to streamline the rule and better outline the official responsible for reviewing the permit applications. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0304, *Applications*, which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5212 because the changes improve clarity of the rule, better define the individual or individuals responsible for reviewing permit applications, and better align the LIP with the SIP.

B. Rule 1.5213, “*Action on Application; Issuance of Permit*”

The April 24, 2020, revision modifies Rule 1.5213, *Action on Application; Issuance of Permit*, by correcting grammatical errors and updating references. This rule outlines, among other things, the schedule, public participation requirements, and steps that must be completed for a facility to be issued a permit. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0308, *Final Action on Permit Applications*, which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5213 because the changes improve the clarity of the rule and better align the LIP with the SIP.

C. Rule 1.5214, “*Commencement of Operation*”

The April 24, 2020, revision modifies Rule 1.5214, *Commencement of Operation*, by updating the list of permitting rules triggering an inspection within 90 days after MCAQ receives a notification of completion. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. Rule 1.5214 outlines, among other things, the requirements for a permittee to notify MCAQ of the completion of construction, alteration, or installation and its intent to commence operation and identifies the sources subject to inspection within 90 days after providing such notice. The change updates the reference to MCAQ’s rule on *National Emissions Standards for Hazardous Air Pollutants* from Rule 2.0525 to Rule 2.1110.⁶ EPA is

⁶ Although not shown by underlined text as a change in the January 21, 2016, submittal, this correction is the only change made to the LIP-approved version of Rule 1.5214.

proposing to approve the update to Rule 1.5214 because the change corrects an erroneous cross-reference.

D. Rule 1.5215, “*Application Processing Schedule*”

The April 24, 2020, revision modifies Rule 1.5215, *Application Processing Schedule*, by making minor regulatory updates and grammatical corrections. This rule outlines a schedule that MCAQ must follow for processing applications for permits, permit modifications, and permit renewals. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. The regulatory revision states the Director shall cease processing of an application if it contains insufficient information to complete a review. Previously, the Rule stated that the Director may return the application if incomplete. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0312, *Application Processing Schedule*, which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5214 because the changes are minor in nature and better align the LIP with the SIP.

E. Rule 1.5217, “*Confidential Information*”

The April 24, 2020, revision includes Rule 1.5217, *Confidential Information*, regarding the submittal, evaluation, and handling of confidential information. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0107, *Confidential Information*, which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to incorporate Rule 1.5217 into the LIP to better align the LIP with the SIP.

F. Rule 1.5218, “*Compliance Schedule for Previously Exempted Activities*”

The April 24, 2020, revision includes Rule 1.5218, *Compliance Schedule for Previously Exempted Activities*, which contains the schedule for permit application or revision for sources that were exempt from permitting but are now required to be permitted because of a change in permit exemptions or because the source became subject to 40 CFR part 63. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0109, *Compliance Schedule for Previously Exempted Activities*, which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is

proposing to approve incorporate Rule 1.5218 into the LIP to add certainty regarding the permitting schedule for certain facilities and better align the LIP with the SIP.

G. Rule 1.5219, “*Retention of Permit at Permitted Facility*”

The April 24, 2020, revision modifies Rule 1.5219, *Retention of Permit at Permitted Facility*, by making minor grammatical corrections. EPA incorporated this rule into the LIP on July 28, 1995, and it requires permitted facilities to retain copies of all active permits at the facility identified in the permit. *See* 60 FR 38715. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0110, *Retention of Permit at Permitted Facility*, which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to approve the updates to Rule 1.5219 because they are minor grammatical corrections and better align the LIP with the SIP.

H. Rule 1.5220, “*Applicability Determinations*”

The April 24, 2020, revision includes Rule 1.5220, *Applicability Determinations*, which states that any person can write the Director requesting a determination as to whether a source that the person owns or operates or proposes to own or operate is subject to Article 1.0000 permitting requirements. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0111, *Applicability Determinations*, which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to incorporate Rule 1.5218 into the LIP to better align the LIP with the SIP.

I. Rule 1.5221, “*Permitting of Numerous Similar Facilities*”

The April 24, 2020, revision modifies Rule 1.5221, *Permitting of Numerous Similar Facilities*, by making grammatical corrections. EPA incorporated this rule into the LIP on July 28, 1995, and it states that the Director shall not issue a single permit for multiple facilities unless there is no difference between the facilities that would require special permit conditions for any individual facility and no unique analysis is required for any facility covered by the permit. *See* 60 FR 38715. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0310, *Permitting of Numerous Similar Facilities*, which EPA most recently revised on March 1, 2021.

See 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5221 because they are minor grammatical corrections and better align the LIP with the SIP.

J. Rule 1.5222, “*Permitting of Facilities at Multiple Temporary Sites*”

The April 24, 2020, revision modifies Rule 1.5222, *Permitting of Facilities at Multiple Temporary Sites*, by making minor grammatical corrections. EPA initially incorporated this rule into the LIP on July 28, 1995, which governs the permitting of a facility or source at multiple temporary operating sites. See 60 FR 38715. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0311, *Permitting of Facilities at Multiple Temporary Sites*, which EPA most recently revised on March 1, 2021. See 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5222 because the changes are minor grammatical corrections and better align the LIP with the SIP.

K. Rule 1.5232, “*Issuance, Revocation, and Enforcement of Permits*”

The April 24, 2020, revision modifies Rule 1.5232, *Issuance, Revocation, and Enforcement of Permits*, by making minor grammatical corrections. Among other things, this rule identifies criteria for revoking or modifying a permit issued under Section 1.5200 – *Air Quality Permits* or Section 1.5600 – *Transportation Facility Procedures* and enforcement provisions for the failure to apply for and obtain a permit under Section 1.5200 and for violations of a Section 1.5200 permit. EPA last approved changes to Rule 1.5232 on June 30, 2003. See 68 FR 38631. EPA is proposing to approve the updates to Rule 1.5215 because the changes are minor grammatical corrections.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference MCAPCO Rule 1.5214 - *Commencement of Operation*, which has an effective date of December 15, 2015; and Rules 1.5212 - *Applications*; 1.5213 - *Action on Application*; *Issuance of Permit*; 1.5215 - *Application Processing Schedule*; 1.5217 -

Confidential Information; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; 1.5219 - *Retention of Permit at Permitted Facility*; 1.5220 - *Applicability Determinations*; 1.5221 - *Permitting of Numerous Similar Facilities*; 1.5222 - *Permitting of Facilities at Multiple Temporary Sites*; and 1.5232 - *Issuance, Revocation, and Enforcement of Permits*, all of which have an effective date of December 18, 2018, into the Mecklenburg County portion of the North Carolina SIP. EPA has made and will continue to make these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Mecklenburg LIP. Specifically, EPA is proposing to approve updates to MCAPCO Rules 1.5212 - *Applications*; 1.5213 - *Action on Application; Issuance of Permit*; 1.5215 - *Application Processing Schedule*; 1.5219 - *Retention of Permit at Permitted Facility*; 1.5221 - *Permitting of Numerous Similar Facilities*; 1.5222 - *Permitting of Facilities at Multiple Temporary Sites*; and 1.5232 - *Issuance, Revocation, and Enforcement of Permits*. Additionally, EPA is proposing to approve MCAPCO Rules 1.5217 - *Confidential Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; and 1.5220 - *Applicability Determinations* into the LIP. EPA is proposing to approve these changes because they are consistent with the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order

13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 9, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

[FR Doc. 2021-20005 Filed: 9/16/2021 8:45 am; Publication Date: 9/17/2021]